309.

SUPREME COURT OF THE UNITED STATES.

No. 102.

McKEAN BUCHANAN, PLAINTIFF IN ERROR,

vs.

JAMES ALEXANDER.

IN ERROR TO THE CIRCUIT SUPERIOR COURT FOR THE COUNTY OF NORFOLK, STATE OF VIRGINIA.

INDEX.

	Original.	Print.
Petition of McKean Buchanan	1	2
Supersedeas granted	4	4
Record filed with and referred to in petition	5	4
Proceedings in circuit superior court	8	5
Judgment	9	7
Clerk's certificate	9	7
Judge's certificate	10	8
Writ of error	11	8
Citation	12	9
Service of citation	13	9

J. & G. S. Gideon, printers.

Pleas before the honorable Richard H. Baker, judge of the circuit superior court of law and chancery for Norfolk county, at the court-house of said county, on Thursday, the 10th day of November, in the year of our Lord one thousand eight hundred and forty-two.

Be it remembered, that, at another day, to wit, in the clerk's office of our said circuit superior court of law and chancery for Norfolk county, on the eighteenth day of December, 1841, came McKean Buckanan, by Robert C. Nicholas, esq., his attorney, and filed his petition, with an order thereon endorsed, awarding a supersedeas against James Alexander; which petition, with the endorsement thereon, is in these words and figures following, to wit:

To the honorable Richard H. Baker, judge of the circuit superior court of law and chancery for the county of Norfolk.

The petition of McKean Buckanan respectfully represents: That he is aggrieved by a final judgment of the county court of Norfolk county, rendered on the 15th day of November, 1841, in an attachment therefor issued by a justice of the peace of said county against the estate of Thomas Armstrong, for a debt of $72 18 cts., due by said Armstrong to a certain James Alexander. A transcript of the record of the judgment complained of is herewith presented, by which it will be perceived that the case is as follows:—The beforementioned attachment was issued on the 10th Nov'r, 1841, and made returnable to the next court on the 15th of the same month. The constable to whom the attachment was directed made return thereon, that he had attached by levying on the goods and chattels of said Thomas Armstrong, in the hands of your petitioner, or so much thereof as was sufficient to satisfy the said debt and costs; and that he had summoned your petitioner to appear at the next court. Your petitioner attended said court, in obedience to the said summons, and, having been sworn by order of the court, stated, in answer to a question propounded to him, that he held in his hands, and there was due upon his books as purser of the United States ship Constitution, at the time of the service of said attachment, and at that time also, the sum of $117 58 cts., and no more. The court, upon the testimony of a witness, (the said Armstrong failing to appear,) gave judgment against said Thomas Armstrong, for $68 25 cts. and costs; and also rendered a judgment for the same sum against your petitioner, as purser of the United States ship Constitution, as aforesaid; and upon the said judgment an execution issued on the 2d day of December, 1841, against the goods and chattels of your petitioner.

Your petitioner assigns the following errors in the said judgment:

1st. It appears, from the officer's return on the attachment, that he had levied on the goods and chattels of said Armstrong, in the hands of your petitioner. The court, *hower*, in its judgments, takes no notice, by order of sale or otherwise, of the goods and chattels, of the absent defendant, stated in said return to have been levied upon, but proceeds to give a personal judgment against your petitioner as purser aforesaid.

2d. The judgment against your petitioner is substantially and in effect a judgment against the United States, for it is rendered against him in his official character as purser of the United States ship Constitution, for and on account of money appearing on his books as purser to be due to the defendant Armstrong—not from your petitioner, but from the United States—money which his official duty required him to disburse in the mode pointed out by law and the regulations of the Navy Department, duties for the faithful performance of which he is required to give bond, with sureties, in a heavy penalty. It is a well established *principal*, as your petitioner is advised, and recognised by the Supreme Court, that the United States cannot be sued; that if public officers can be compelled, by a judicial proceeding like the present, to disburse money of the United States in any other mode than that which their official duty requires, then will a party be permitted to do that indirectly which the law will not authorize him to do directly.

3d. Your petitioner is advised, that by a recent decision of the Supreme Court of the United States, in a case arising under the *persion* laws, it has been held that the courts, whether State or Federal, have no power to interfere with the performance of the ordinary duties of the Executive departments of the Government, and that such interference would be productive of nothing but mischief and disorder; and such your petitioner insists would be the unavoidable consequences of authorizing attachments against pursers of the United States, and interrupting them in the regular discharge of their official functions.

4th. It is apparent, from the record in this case, that the amount due to the defendant, Armstrong, was for pay for services on board the United [States] ship Constitution, to which he had been recently attached; and your petitioner is advised that the attachment law under which this attachment issued was not designed to apply to seafaring men having no fixed place of residence, and whose removal therefore from place to place cannot be regarded as an act of absconding and concealment contemplated by the law.

5th. The judgment in this case against your petitioner obviously proceeded upon the idea that the amount of pay which appeared upon the purser's books to be due to the absent debtor, Armstrong, was a debt from your petitioner to him, for on no other ground could said judgment have been sustained by the 6th section of the attachment law, which is the foundation of this proceeding.

Now it is very clear, as before stated, that the debt in this case was due from the United States and not from your petitioner; and in proof of this, it is very certain that the defendant, Armstrong, could not have recovered the amount in a suit against your petitioner, and the attaching creditor can have only such rights in regard to this particular fund as his debtor possessed at the [time] of the attachment. But your petitioner is advised that the question as to his liability to this attachment has been settled by an authoritative judicial decision, in analogous cases, against such liability.

And for the said errors he prays a writ of supersedeas to the judgment aforesaid.

McKEAN BUCKANAN,
By his counsel.

I, R. C. Nicholas, an attorney practising in the circuit superior court of law and chancery for the county of Norfolk, do certify, that in my opinion, there is sufficient matter for reversing the judgment complained of in the foregoing petition.

Dec'r 13, 1841. R. C. NICHOLAS.

Let a supersedeas issue, the applicant to give bond in a *some* equal to twice the amount of the judgment of the court below.

JOHN SCOTT.

To the clerk of the circuit superior court of law and chancery for the county of Norfolk.

The following is a copy of the record filed with and referred to in the foregoing petition:

Know all men by these presents, that we, James Alexander and T. W. Johnson, are held and firmly bound to Thomas Armstrong, in the sum of one hundred and forty-four dollars and $\frac{36}{100}$, to be paid to the said Thomas Armstrong, his certain attorney, his executors, administrators or assigns, for the payment whereof we bind ourselves, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 10th day of November, 1841.

The condition of the above obligation is such, that whereas the above bound James Alexander hath this day applied to James E. Wilson, a justice of the peace for the county of Norfolk, for an attachment against the estate of the above named Thomas Armstrong, for the sum of $72 18, which attachment hath been granted, on previously entering into this bond, returnable to the next county court; if, therefore, the said James Alexander shall pay all costs which shall be awarded to the said Thomas Armstrong, in case the said James Alexander shall be cast in the said suit, and also all damages which shall be recovered against the said James Alexander for his suing out the said attachment, then the above obligation to be void, else it remain in full force.

JAMES ALEXANDER, [SEAL.]
THOS. W. JOHNSON. [SEAL.]

Signed, sealed, and delivered before—
JAMES E. WILSON.

NORFOLK COUNTY, *to wit:*

To Thomas R. Jordan, constable.

Whereas James Alexander hath this day complained before me, James E. Wilson, a justice of the peace for the said county, that Thomas Armstrong is indebted to him in the sum of seventy-two dollars and eighteen cents, due by account; and that the said Thomas Armstrong absconds or conceals himself so that the ordinary process of law cannot be served on him; and that the said James Alexander having given bond and security according to law: These are, therefore, in the name of the Commonwealth, to require you to attach the estate of the said Thomas Armstrong, or so much thereof as shall be of value sufficient to satisfy the said sum of seventy-two dollars and eighteen cents and the costs, and such estate, so attached in your hands, to secure or so to provide, that the same may be liable to further proceedings thereon, to be had at the next court, and there make return how you have executed this warrant.

Given under my hand and seal, this 10th day of November, 1841.

JAMES E. WILSON, *J. P.* [SEAL.]

NORFOLK COUNTY:

Pursuant to the within warrant I have attached, by levying on the goods and chattels of the within named Thomas Armstrong, in the hands of McKean Buckanan, or so much thereof as may be sufficient to satisfy the said debt and costs, and have summoned the said garnishee to appear at the next county court, to be held for this county, on Monday next, the 15th of November, 1841.

THOMAS R. JORDAN, *Constable.*

At a court held for Norfolk county, the 15th day of November, 1841.

JAMES ALEXANDER vs. THOS. ARMSTONG. } Attachment.

James Alexander having taken out an attachment, according to law, against Thos. Armstrong, an absconding debtor, and Thos. R. Jordan, a constable of this county, to whom the said warrant of attachment was directed, having made return that he had executed the said attachment on the goods, chattels, and moneys of the said Thos. Armstrong, in the hands of McKean Buckanan, and summoned him as a garnishee, this day came, as well the plaintiff, by his attorney, as the said garnishee, in his proper person, who, being sworn, declared, that he held in his hands, and there was due upon his books, as purser of the United States ship Constitution, at the time of the service of the said attachment, as well as at this present time, the sum of one hundred and seventeen dollars and fifty-eight cents, and no more; and the said defendant not appearing, though

solemnly called, and it appearing, by the testimony of a witness, that the defendant is indebted to the plaintiff in the sum of sixty-eight dollars and twenty-five cents, it is considered by the court, that the plaintiff recover against the defendant the said sixty-eight dollars and twenty-five cents, and his costs by him in this behalf expended; and it is further considered, that the plaintiff recover against the said McKean Buckanan, purser as aforesaid, the aforesaid sum of sixty-eight dollars and twenty-five cents, of the moneys in his hands, and belonging, as aforesaid, to the said Thos. Armstrong, and the costs of this suit.

Costs—Clerk - - - - - - -	$1 93
Attorney - - - - - -	2 50
Court - - - - - - -	84
	$5 27

Upon which judgment, an execution of fi. fa. issued on the 2d day of December, 1841, against the goods and chattels of the garnishee.

The following is a copy [of] the account upon which the foregoing proceedings are founded.

Thomas Armstrong to James Alexander, Dr.

1841.			
Nov.	2	To cash 3s., shoes 9s., pumps 9s. - -	$3 50
"	3	" cash 3s., hkf. 6s., socks 3s. - -	2 00
"		" 2 white shirts 18s., 1 striped do. 6s. -	4 00
"		" 2 merino shirts 30s., cash 36s. - -	11 00
"		" drinks 9d. - - - -	13
"	4	" paid Spalding for gun, &c. 6s. 9d. -	1 12
"		" cash 18s., shoes 9s., socks 2s. 3d., dks. 1s. ¼	5 16
"		" cash 6s. - - - - -	1 00
"	5	" dks. 9d., do. 2s. 6d., cash 18s. - -	3 56
"		" cash 60s., pd. Bell for hat 21s. - -	13 50
"	6	" cash 30s. - - - - -	5 00
"		" paid J. E. Wilson for horse 3s. - -	50
"	7	" cash 30s., do. 30s., drinks 9d. - -	10 13
"		" box soda powders 1s. 6d. - - -	25
"		" shoes 9s. - - - - -	1 50
"	9	" 1½ weeks board 24s. - - -	6 00
		" cash lent at different times - -	3 93
			$72 18
		Deduct $3 93 - - - - - -	3 93
			$68 25

Copy.—Test:

P. H. COOKE,
D'y Clerk, 1841.

And, at another day, to wit: at a special term of the circuit superior court of law and chancery, held for Norfolk county, at the court-house, on the 20th day of July, 1842.

McKean Buckanan, plff.,
against
James Alexander, deft.

Upon a supersedeas to a judgment of the county court of Norfolk, rendered on the 15th day of November, 1841, upon an attachment against Thomas Armstrong, an absconding debtor, in favor of James Alexander, whereby it was considered that the plaintiff recover against McKean Buckanan, purser of the United States navy, the sum of sixty-eight dollars and twenty-five cents, of moneys in his hands, and admitted by the said Buckanan to be in his hand, and belonging, [as] aforesaid, to the said Thos. Armstrong, and the costs of suit.

By consent of the parties, by their attorneys, it is ordered that this suit be continued till the next court.

And now, at this day, to wit, at a circuit superior court of law and chancery, continued by adjournment, and held for the said county of Norfolk, at the court-house, on the same day and year first herein before mentioned, to wit, on Thursday, the 10th day of November, 1842.

This day came the parties, by their attorneys, and thereupon the transcript of the record of the judgment aforesaid being seen and inspected, and upon the arguments of counsel, it seems to the court here, that there is no error in the said judgment. Therefore it is considered that the same be affirmed, and that the defendants recover against the plaintiff damages, according to law, for retarding the execution thereof, and his costs by him about his defence in this behalf expended.

Costs—Plaintiff - - -	$6 99
Costs—Defendant - - -	4 07

State of Virginia, *Norfolk county, to wit:*

I, Arthur Emmerson, clerk of the circuit superior court of law and chancery for Norfolk county, in the State of Virginia, do hereby certify, that the foregoing is a true transcript of the record and proceedings upon a supersedeas lately depending in the said circuit superior court of law and chancery, between McKean Buckanan, plaintiff, and James Alexander, defendant, with all things touching the same, as fully and wholly as they now exist among the records of my office.

In testimony whereof, I hereto set my hand, and annex the seal of said court, this sixteenth day of May, in the year of our
[seal.] Lord one thousand eight hundred and forty-three, and in the 67 year of the Commonwealth.

ARTHUR EMMERSON, *C. C.*

VIRGINIA, *Norfolk county, to wit:*

I, Richard H. Baker, only judge of the circuit superior court of law and chancery for the said *court* of Norfolk, in the State of Virginia, do hereby certify, that Arthur Emmerson, who hath given the preceding certificate, is clerk of the said court, and that his said attestation is in due form.

Given under my hand, this sixteenth day of May, in the year of our Lord one thousand eight hundred and forty-three, and in the 67 year of the Commonwealth.

RICH. H. BAKER.

Copy of record, - - - - - -	$3 60
Seal, &c. - - - - - - -	1 36
	$4 96

UNITED STATES OF AMERICA:

The President of the United States, to the honorable the judge of the circuit superior court of law and chancery for the county of Norfolk, in the State of Virginia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said circuit superior court of law and chancery for the said county of Norfolk and State aforesaid, before you, between McKean Buckanan, plaintiff, and James Alexander, defendant, upon a writ of supersedeas to a judgment of the county court of Norfolk, the said superior court of law and chancery being the highest court in the said State in which a decision could be had in said suit, a manifest error hath happened, to the great damage of the said McKean Buckanan, as by his complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court to be then and there held; that, the record and proceedings aforesaid being inspected, the Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom [of] the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the ninth day of May, in the year of our Lord one thousand eight hundred and forty-three.

HENRY GIBSON, [SEAL.]
Clerk of the Cir. Ct. of the U. S. for the 4th Cir. and Dist. of Virginia.

Allowed by P. V. DANIEL.

United States of America, to James Alexander, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit superior court of law and chancery for the county of Norfolk, in the State of Virginia, wherein McKean Buchanan is plaintiff in error, and James Alexander is defendant in error, to show cause, if any there be, why judgment rendered against the said McKean Buchanan, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witnesseth the honorable Peter V. Daniel, one of the justices of the Supreme Court of the United States, this 23d day of May, in the year of our Lord one thousand eight hundred and forty-three.

P. V. DANIEL.

STATE OF VIRGINIA, *city of Richmond, to wit:*

On this 21 day of July, in the year 1843, Edmund Christian personally appeared berore the subscriber, Francis Wicker, a justice of the peace in and for the said city, and being sworn on the Holy Evangelists of Almighty God, deposeth and saith, that, on the 28th day of June, 1843, he delivered a true copy of the with in citation to the within named James Alexander.

EDMUND CHRISTIAN.

Sworn to and subscribed before me, the day and year first above written.

F. WICKER, *J. P.*

Filed,

[REC. CII, J. T. 1844.]—2